IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5015 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MEGHA JETHA BHARWAD

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5015 of 2001

MR KJ KAKKAD for Petitioner No. 1-3

Mr S J Dave, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/07/2001

ORAL JUDGEMENT

By consent of the learned Advocates for the parties, this application is heard and disposed of.

This is an application under Section 438 of the

Code of Criminal Procedure, 1973 (for short, 'the Code') for anticipatory bail in connection with C.R. No.I-254/2001 of Malaviyanagar Rajkot City Police Station relating to the offence punishable under section 365, 366, 506(2), 465, 471 read with 120B of IPC. The petitioners' main contentions are that they have not committed any offence and that they have been wrongly involved and, therefore, they may be directed to be enlarged on bail in case of their arrest in the aforesaid offence. Mr S J Dave, learned APP appeared on behalf of the State. He has strongly objected to the grant of the present application on the ground that there is sufficient material on record showing active involvement of the petitioners and, therefore, looking to the nature of allegations made against the petitioners, it is extremely necessary to have the custodial interrogation of the petitioners and therefore, it would not be in the interest of justice as well as in the interest of investigation to enlarge the petitioners on anticipatory bail.

2. The learned Advocate for the petitioner has argued at length that the petitioners have been wrongly involved in the matter and, therefore, they should be granted anticipatory bail in the matter. In support of his argument, he has referred to the FIR which has been filed on 18.6.2001 showing that the offence has been committed on 14.5.2001. It is his contention that the FIR is lodged very late and, therefore, it shows that prima facie, the contentions and averments made in the FIR are not genuine. At the same time, it is to be considered that at this stage, this court is not supposed to appreciate the materials on record. It cannot be disputed that the FIR has been lodged on 18.6.2001 showing that the offence has been committed on 14.5.2001. At the same time, it is also required to be considered that after the victim was lost, efforts were made to trace her out. It should be considered that even in the FIR it has been shown that the victim was taken away by petitioner no.1. That, names of the accused persons are disclosed in the FIR as the persons suspected to have committed the offence in question. Then it is also stated in the FIR that efforts made to trace out the victim as well as petitioner no.1 but they could not be traced out despite efforts were made by the petitioners. In that view of the matter, simply, because the FIR is late, it cannot be said that the FIR has been made on false allegations against the petitioner, prima facie. Then it is also required to be considered that when the victim was brought to the court along with petitioner no.1, she made it clear that she desired to go to stay

with the parents and not with first petitioner. This is a relevant consideration for deciding the present application. It is also required to be considered that before the learned Magistrate, the victim had given a statement showing that the petitioners were likely to assault the victim. That she had never contracted marriage with the first petitioner and no ceremony was performed. This shows that according to the case of the victim, the entire case of marriage was a got up one. At this stage, again it is not necessary to consider as to whether or not the aforesaid statement made by the victim is true or not but the fact is that there are serious allegations made against the petitioners and, therefore, it would be necessary for the investigating police agency to have custodial interrogation of the petitioners.

3. In support of his contention, learned Advocate for the petitioners has relied upon an unreported judgment of the Hon'ble le Supreme Court in Criminal Appellate Jurisdiction (Criminal Appeal No.345/2001) wherein the Supreme Court was inclined to grant anticipatory bail to the persons concerned on certain conditions. It should be considered here that this was a matter found to be a fit case for exercising jurisdiction in favour of the accused by the Supreme Court. The Supreme Court has observed that the appellants have obtained an order of anticipatory bail from the Addl.Sessions Judge, Delhi on 20.8.1999 that the appellants shall not be arrested during the time they approach the court at Madras for a duration of 16 days. This was one of the considerations for passing appropriate orders by the Supreme Court. The facts are different before us. When it is found that the offences said to have been committed by the petitioners are of grave nature and looking to the statement made by the victim showing that no marriage ceremony was performed and a show was created that there was marriage ceremony between the first petitioner and the victim and looking to the averments made by the victim and the informant at different places, it has to be observed that custodial interrogation of the petitioners is necessary and when such an interrogation is necessary, it would not be just and proper or in the interest of justice or in the interest of investigation to grant anticipatory bail.

4. For the foregoing reasons, I am of the opinion that this is not a fit case for the grant of anticipatory bail. Consequently, this application is dismissed. Notice discharged.

23.7.2001 [D P Buch, J.]

msp